

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

V

Case No. 19-20254-01
Honorable Terrence G. Berg

LINDA WARDLOW,
Defendant.

JEFFREY L. EDISON (P25912)
Attorney for Defendant
500 Griswold Street, Suite 2410
Detroit, MI 48226
(313) 964-0400
jlee@ix.netcom.com

CORINNE M. LAMBERT
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, MI 48226
(313) 226-9129
corinne.lambert@usdoj.gov

**LINDA WARDLOW'S REPLY TO UNITED STATES' RESPONSE
OPPOSING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE**

The government's opposition to Linda Wardlow's Motion for Reduction of Sentence and Compassionate Release is misplaced and should be rejected by this Court.

EXTRAORDINARY AND COMPELLING REASONS

The government agrees that Ms. Wardlow's underlying medical condition of emphysema is an "extraordinary" reason for release under §3582(c)(1)(A). However, the government argues that Ms. Wardlow's reasons for release are not "compelling." ECF No. 22, PageID 151-152.

The government contends that Ms. Wardlow's conditions and circumstances of her confinement minimizes the potential danger of her potential exposure to COVID-19. It suggests that Ms. Wardlow's incarceration at FMC Lexington, a federal medical center,

will sufficiently attend to her medical needs and negates “compelling” reasons for compassionate release. Emphysema is a lung condition, wherein, the air sacs in the lungs are damaged. Over time, the inner walls of the air sacs weaken and rupture – creating larger air spaces instead of many small ones. This reduces the surface area of the lungs and, in turn, the amount of oxygen that reaches your bloodstream. Treatment may slow the progression of the disease, but it can’t reverse the damage.

<https://www.mayoclinic.org/diseases-conditions/emphysema/symptoms-causes/syc-20355555>. While Ms. Wardlow may not have experienced a recent flare-up of her emphysema and while she has access to medical treatment and counselling, her exposure to COVID-19 could result in serious complications, including death.

The government contends, “perhaps most importantly, Wardlow’s BOP medical records indicate that she received the first dose of the Moderna Covid-19 vaccine on February 19, 2021. (Ex. 1, p. 71.) By the time the Court reads the Government’s brief, it is likely that Wardlow will be receiving her second dose within the week. According to the CDC, clinical trials have shown that the Moderna vaccine is 94.1% effective at preventing Covid-19 illness in people who have received two doses and is highly effective among persons with underlying medical conditions. <https://www.cdc.gov/coronavirus/2019-now/vaccines/different-vaccines/Moderna.html> (last visited Mar. 14, 2021). Therefore, Wardlow is much less likely to be infected with Covid-19 or suffer from severe symptoms and complications if infected.” ECF No. 22, PageID 155-156.

Ms. Wardlow’s vaccination does not provide total immunity from contracting COVID-19; and does not negate her extraordinary and compelling reasons for

compassionate release. There is insufficient data to reasonably determine the overall effectiveness of vaccines on current and new viral strains. Without any assurance that Ms. Wardlow will receive protection against new viral variants, this Court should “err on the side of caution to avoid potentially lethal consequences for” her. *See United States v. Yellin*, No. 3:15-CR-3181-BTM-1, 2020 WL 3488738, at *3 (S.D. Cal. June 26, 2020) (“Without scientific conclusions as to whether reinfection is possible or how long COVID-19 immunity lasts, the Court must err on the side of caution to avoid potentially lethal consequences for Mr. Yellin.”).

Importantly, experts note that “[m]aximum protective benefit of the vaccine is not achieved until at least 2 weeks after the second dose.” Ex. 1, Decl. of Dr. J. Meyer, *Martinez-Brooks v. Easter*, 3:20-cv-00569-MPS, ECF 326-2 at ¶ 6 (D. Conn. Jan. 14, 2021) (hereinafter “Meyer Decl.”). As seen with the high infection rate during the events of January 6, 2021, at the U.S. capitol, several lawmakers becoming infected in close quarters indoors shortly after receiving the vaccine serves as “a reminder that people can still be vulnerable to infection after being vaccinated, particularly in the two weeks after receiving the second dose.” Wang et. al., *Two lawmakers test positive for coronavirus, one after receiving both doses of vaccine*, Wash. Post (Jan. 30, 2021) <https://www.washingtonpost.com/politics/2021/01/30/two-lawmakers-test-positive-coronavirus-one-after-receiving-both-doses-vaccine/>.

New variants of COVID-19 pose a serious threat that only amplify the extraordinary and compelling reasons for release in this case. As another court has noted, “variants to the SARS-CoV-2 strain were identified that may (or may not) allow the virus

to spread more quickly, lead to ‘more severe or less severe illness,’ and ‘evade vaccine-induced immunity.’” *United States v. White*, No. 3:17-CR-00104-2, 2021 WL 268719, at *4 (M.D. Tenn. Jan. 27, 2021) (granting compassionate release in light of COVID-19 to defendant with Hepatitis B, Hepatitis C, and recovered from cancer). The United States is behind the curve in sequencing new viral variants, which Dr. Fauci recently called a “wake up call.” Sheryl Stolberg, *Covid-19: Vaccines Must Be Ready to Adapt to Variants, Fauci Says*, N.Y. Times (Jan. 31, 2021)

<https://www.nytimes.com/live/2021/01/29/world/covid-19-coronavirus/>.

The CDC has highlighted the three main threats from the rise of new COVID-19 variants in that they can be 1) more contagious, like the variant identified in the UK that “spreads more easily and quickly than other variants,” 2) may be more deadly or “be associated with an increased risk of death compared to other variant viruses,” and 3) potentially more resistant to immunity, as evidenced by early data on the Brazilian-identified variant that “contains a set of additional mutations that may affect its ability to be recognized by antibodies.”¹

As the administration acknowledges, these viral “mutations also will challenge the ability of existing treatments and vaccines to curb the virus’ spread.” Cunningham et. al., *Coronavirus updates: Variant prompts travel curbs as Fauci calls U.S. spread a ‘wake-up call’, Wash. Post (Jan. 29, 2021)*,

<https://www.washingtonpost.com/nation/2021/01/29/covid-coronavirus-updates/>.

Pfizer and Moderna have acknowledged the variants present a set of new moving targets,

¹ CDC, *New Variants of the Virus that Causes COVID-19* (Updated Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html>.

and as “the coronavirus assumes contagious new forms around the world, [the] two drug makers reported on Monday that their vaccines, while still effective, offer less protection against one variant and began revising plans” Denise Grady et. al., *As Virus Grows Stealthier, Vaccine Makers Reconsider Battle Plans*, N.Y. Times (Jan. 25, 2021), <https://www.nytimes.com/2021/01/25/health/coronavirus-moderna-vaccine-variant.html>; Andrew Joseph, *Moderna’s vaccine is less potent against one coronavirus variant but still protective, company says*, STAT News (Jan. 25, 2021), <https://www.statnews.com/2021/01/25/moderna-vaccine-less-effective-variant/> (noting company warns that “lower titers [of antibodies against B.1.351] may suggest a potential risk of earlier waning of immunity to the new B.1.351 strains.”) Moderna is currently in trials with respect to an additional third booster dose of their vaccine, given the threat these new variants pose. *Id.* And the Johnson & Johnson vaccine results have been disappointing, given that it is less effective than the other two U.S. vaccines, and its “efficacy rate was just 57 percent in South Africa, where a variant has been spreading.” Sheryl Stolberg, *Covid-19: Vaccines Must Be Ready to Adapt to Variants, Fauci Says*, N.Y. Times (Jan. 31, 2021), <https://www.nytimes.com/live/2021/01/29/world/covid-19-coronavirus>.

The CDC itself states that we “won’t know how long immunity produced by vaccination lasts until we have more data on how well the vaccines work.” Ctrs. For Disease Control and Prevention, *Facts about COVID-19 Vaccines* (updated Jan. 29, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/facts.html>. And unfortunately, widespread vaccine distrust in the community means that as a population,

we might well fail to reach herd immunity. Thunstrom et. al., *Hesitancy Towards a COVID-19 Vaccine and Prospects for Herd Immunity* (June 30, 2020), <https://ssrn.com/abstract=3593098> or <http://dx.doi.org/10.2139/ssrn.3593098>.

18 U.S.C. § 3553(a) FACTORS

Ms. Wardlow does not minimize the seriousness of her past behavior and resulting consequences on the government, her family, and her material and emotional wellbeing. The decision to begin serving her term of 6 months imprisonment was not “an attempt to serve as little of this sentence as possible,” as argued by the government. ECF No. 22, PageID, 159. Ms. Wardlow’s incarceration was imminent, and the emotional stress of anticipation was immeasurable. Anyone who is vulnerable to being infected with the devastating and life-threatening COVID-19, must do everything within their power to protect themselves. Ms. Wardlow, accordingly, initiated the process for a sentence reduction.

Ms. Wardlow is accountable for another serious consequence of her conduct. The Social Security Administration has suspended her \$1,021.20 monthly benefit until April 2033. Ms. Wardlow will not have a guaranteed income until she reaches the age of eighty-three (83). See Exhibit I.

CONCLUSION

Given the ongoing outbreaks in BOP and the well-established heightened danger of COVID-19 outbreaks in congregative living facilities,² the Government cannot

² It is well established by now that “detention conditions create a heightened risk of danger to detainees.” *United States v. Milner*, 461 F. Supp. 3d 1328, 1334 (M.D. Ga. 2020) (citations omitted); *see also United States v. Brown*, 457 F. Supp. 3d 691, 695 (S.D. Iowa 2020) (“Already ‘tinderboxes for infectious disease,’ prisons now are even more dangerous than we typically accept.”); *United States v. Beam*, No. 417CR00463MHGMB1, 2020 WL

reasonably assert that Ms. Wardlow's access to treatment while incarcerated and her vaccination sufficiently negates the danger to Ms. Wardlow posed by COVID-19 in light of her age and multiple comorbidities. This Court should reject the Government's arguments and should "not allow [Ms. Wardlow] to be endangered for one more day. We are living in novel and dangerous times. Every day – indeed, every minute – may count, particularly for someone like [Ms. Wardlow] who is at a high-risk from COVID-19 and currently lives in a facility with a documented outbreak and limited means of protection." *United States v. Park*, 456 F. Supp. 3d 557, 563 (S.D.N.Y. 2020).

Accordingly, Linda Wardlow urges this Court to grant her Motion for Reduction of Sentence and Compassionate Release.

Respectfully submitted,

/s/ Jeffrey L. Edison
Jeffrey L. Edison (P25912)
Attorney for Linda Wardlow
500 Griswold Street, Suite 2410
Detroit, MI 48226
313.964.0400
jelee@ix.netcom.com

Dated: March 21, 2021

7327988, at *4 (N.D. Ala. Dec. 11, 2020) (acknowledging detention facilities are pandemic tinderboxes) (citation omitted); *United States v. Mueller*, 471 F. Supp. 3d 625, 627 (E.D. Pa. 2020) ("Prisons are tinderboxes for infectious disease.").

EXHIBIT I

**Social Security Administration
Retirement, Survivors and Disability Insurance
Important Information**

Great Lakes Program Service Center
600 West Madison Street
Chicago, Illinois 60661-2474
Date: August 27, 2020
BNC#: 20T2228G69327-D

0003496 00018117 1 AB 0.419 0820M1T2R4PN T69 P11
LINDA D WARDLOW
2907 MOON LAKE DR
WEST BLOOMFIELD MI 48323-1843

U.S. GOVERNMENT PRINTING OFFICE: 2020 O-125-000-000

We are writing to you about your Social Security benefits.

What You Should Know

We cannot pay you your regular monthly benefit at this time.

As you requested on or about August 20, 2020 we changed your direct deposit information. We will send your Social Security payments to the new financial institution or account you selected.

You should keep the old account open until we send a payment to the new account. It usually takes us 1 to 2 months to change where we send payments.

Please let us know right away if your address changes so we can send any future letters to your new address. Also let us know if you change the bank account where we send your payments.

What We Will Pay And When

We pay Social Security benefits for a given month in the next month. For example, Social Security benefits for March are paid in April.

- You will receive \$1,021.20 for April 2033 around May 3, 2033.

20T2228G69327-D

Page 2 of 3

If You Disagree With The Decision

If you do not agree with this decision, you have the right to appeal. We will review your case and look at any new facts you have. A person who did not make the first decision will decide your case. We will review the parts of the decision that you think are wrong and correct any mistakes. We may also review the parts of our decision that you think are right. We will make a decision that may or may not be in your favor.

- You have 60 days to ask for an appeal in writing.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for an appeal.
- You can file an appeal with any Social Security office. You must ask for an appeal in writing. Please use our "Request for Reconsideration" form, SSA-561. You may go to our website at www.socialsecurity.gov/online/ to find the form SSA-561. You can also contact us by phone, mail, or come into an office to request the form. If you need help to fill out the form, we can help you by phone or in person.



Suspect Social Security Fraud?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

If You Have Questions

We invite you to visit our website at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-866-331-7024. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
27650 FARMINGTON RD
FARMINGTON HILLS, MI 48334

20T2228G69327-D

Page 3 of 3

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

Social Security Administration

102020YCK450002279

0003496



CERTIFICATE OF SERVICE

I certify that on March 21, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to Corinne M. Lambert, Assistant U. S. Attorney.

/s/ Jeffrey L. Edison
Jeffrey L. Edison (P25912)